

## Calendar No. 1115

110TH CONGRESS  
2D SESSION**H. R. 4081**

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 2008

Received

OCTOBER 2 (legislative day, SEPTEMBER 17), 2008

Read twice and placed on the calendar

**AN ACT**

To prevent tobacco smuggling, to ensure the collection of  
all tobacco taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; PURPOSES.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Prevent All Cigarette Trafficking Act of 2008” or  
6 “PACT Act”.

7 (b) FINDINGS.—Congress finds that—

8 (1) the sale of illegal cigarettes and smokeless  
9 tobacco products significantly reduces Federal,  
10 State, and local government revenues, with Internet

1 sales alone accounting for billions of dollars of lost  
2 Federal, State, and local tobacco tax revenue each  
3 year;

4 (2) Hezbollah, Hamas, al Qaeda, and other ter-  
5 rorist organizations have profited from trafficking in  
6 illegal cigarettes or counterfeit cigarette tax stamps;

7 (3) terrorist involvement in illicit cigarette traf-  
8 ficking will continue to grow because of the large  
9 profits such organizations can earn;

10 (4) the sale of illegal cigarettes and smokeless  
11 tobacco over the Internet, and through mail, fax, or  
12 phone orders, make it cheaper and easier for chil-  
13 dren to obtain tobacco products;

14 (5) the majority of Internet and other remote  
15 sales of cigarettes and smokeless tobacco are being  
16 made without adequate precautions to protect  
17 against sales to children, without the payment of ap-  
18 plicable taxes, and without complying with the nomi-  
19 nal registration and reporting requirements in exist-  
20 ing Federal law;

21 (6) unfair competition from illegal sales of ciga-  
22 rettes and smokeless tobacco is taking billions of dol-  
23 lars of sales away from law-abiding retailers  
24 throughout the United States;

1           (7) with rising State and local tobacco tax  
2 rates, the incentives for the illegal sale of cigarettes  
3 and smokeless tobacco have increased;

4           (8) the number of active tobacco investigations  
5 being conducted by the Bureau of Alcohol, Tobacco,  
6 Firearms, and Explosives rose to 452 in 2005;

7           (9) the number of Internet vendors in the  
8 United States and in foreign countries that sell ciga-  
9 rettes and smokeless tobacco to buyers in the United  
10 States increased from only about 40 in 2000 to  
11 more than 500 in 2005; and

12           (10) the intrastate sale of illegal cigarettes and  
13 smokeless tobacco over the Internet has a substan-  
14 tial effect on interstate commerce.

15 (c) PURPOSES.—It is the purpose of this Act to—

16           (1) require Internet and other remote sellers of  
17 cigarettes and smokeless tobacco to comply with the  
18 same laws that apply to law-abiding tobacco retail-  
19 ers;

20           (2) create strong disincentives to illegal smug-  
21 gling of tobacco products;

22           (3) provide government enforcement officials  
23 with more effective enforcement tools to combat to-  
24 bacco smuggling;

1           (4) make it more difficult for cigarette and  
 2           smokeless tobacco traffickers to engage in and profit  
 3           from their illegal activities;

4           (5) increase collections of Federal, State, and  
 5           local excise taxes on cigarettes and smokeless to-  
 6           bacco; and

7           (6) prevent and reduce youth access to inexpen-  
 8           sive cigarettes and smokeless tobacco through illegal  
 9           Internet or contraband sales.

10 **SEC. 2. COLLECTION OF STATE CIGARETTE AND SMOKE-**  
 11 **LESS TOBACCO TAXES.**

12           (a) DEFINITIONS.—The Act of October 19, 1949 (15  
 13 U.S.C. 375 et seq.; commonly referred to as the “Jenkins  
 14 Act”) (referred to in this Act as the “Jenkins Act”), is  
 15 amended by striking the first section and inserting the fol-  
 16 lowing:

17 **“SECTION 1. DEFINITIONS.**

18           “As used in this Act, the following definitions apply:

19           “(1) ATTORNEY GENERAL.—The term ‘attorney  
 20           general’, with respect to a State, means the attorney  
 21           general or other chief law enforcement officer of the  
 22           State, or the designee of that officer.

23           “(2) CIGARETTE.—

24           “(A) IN GENERAL.—For purposes of this  
 25           Act, the term ‘cigarette’ shall—

1 “(i) have the same meaning given that  
2 term in section 2341 of title 18, United  
3 States Code; and

4 “(ii) include ‘roll-your-own tobacco’  
5 (as that term is defined in section 5702 of  
6 the Internal Revenue Code of 1986).

7 “(B) EXCEPTION.—For purposes of this  
8 Act, the term ‘cigarette’ does not include a  
9 ‘cigar’, as that term is defined in section 5702  
10 of the Internal Revenue Code of 1986.

11 “(3) COMMON CARRIER.—The term ‘common  
12 carrier’ means any person (other than a local mes-  
13 senger service or the United States Postal Service)  
14 that holds itself out to the general public as a pro-  
15 vider for hire of the transportation by water, land,  
16 or air of merchandise, whether or not the person ac-  
17 tually operates the vessel, vehicle, or aircraft by  
18 which the transportation is provided, between a port  
19 or place and a port or place in the United States.

20 “(4) CONSUMER.—The term ‘consumer’ means  
21 any person that purchases cigarettes or smokeless  
22 tobacco, but does not include any person lawfully op-  
23 erating as a manufacturer, distributor, wholesaler,  
24 or retailer of cigarettes or smokeless tobacco.

1           “(5) DELIVERY SALE.—The term ‘delivery sale’  
2 means any sale of cigarettes or smokeless tobacco to  
3 a consumer if—

4           “(A) the consumer submits the order for  
5 such sale by means of a telephone or other  
6 method of voice transmission, the mails, or the  
7 Internet or other online service, or the seller is  
8 otherwise not in the physical presence of the  
9 buyer when the request for purchase or order is  
10 made; or

11           “(B) the cigarettes or smokeless tobacco  
12 are delivered to the buyer by common carrier,  
13 private delivery service, or other method of  
14 remote delivery, or the seller is not in the phys-  
15 ical presence of the buyer when the buyer ob-  
16 tains possession of the cigarettes or smokeless  
17 tobacco.

18           “(6) DELIVERY SELLER.—The term ‘delivery  
19 seller’ means a person who makes a delivery sale.

20           “(7) INDIAN COUNTRY.—The term ‘Indian  
21 country’ means—

22           “(A) Indian country as defined in section  
23 1151of title 18, United States Code, except that  
24 within the State of Alaska that term applies

1           only to the Metlakatla Indian Community, An-  
2           nette Island Reserve; and

3           “(B) any other land held by the United  
4           States in trust or restricted status for one or  
5           more Indian tribes.

6           “(8) INDIAN TRIBE.—The term ‘Indian tribe’,  
7           ‘tribe’, or ‘tribal’ refers to an Indian tribe as defined  
8           in section 4(e) of the Indian Self-Determination and  
9           Education Assistance Act (25 U.S.C. 450b(e)) or as  
10          listed pursuant to section 104 of the Federally Rec-  
11          ognized Indian Tribe List Act of 1994 (25 U.S.C.  
12          479a–1).

13          “(9) INTERSTATE COMMERCE.—The term  
14          ‘interstate commerce’ means commerce between a  
15          State and any place outside the State, commerce be-  
16          tween a State and any Indian country in the State,  
17          or commerce between points in the same State but  
18          through any place outside the State or through any  
19          Indian country.

20          “(10) PERSON.—The term ‘person’ means an  
21          individual, corporation, company, association, firm,  
22          partnership, society, State government, local govern-  
23          ment, Indian tribal government, governmental orga-  
24          nization of such government, or joint stock company.

1           “(11) STATE.—The term ‘State’ means each of  
2           the several States of the United States, the District  
3           of Columbia, the Commonwealth of Puerto Rico, or  
4           any territory or possession of the United States.

5           “(12) SMOKELESS TOBACCO.—The term  
6           ‘smokeless tobacco’ means any finely cut, ground,  
7           powdered, or leaf tobacco, or other product con-  
8           taining tobacco, that is intended to be placed in the  
9           oral or nasal cavity or otherwise consumed without  
10          being combusted.

11          “(13) TOBACCO TAX ADMINISTRATOR.—The  
12          term ‘tobacco tax administrator’ means the State,  
13          local, or tribal official duly authorized to collect the  
14          tobacco tax or administer the tax law of a State, lo-  
15          cality, or tribe, respectively.

16          “(14) TRIBAL ENTERPRISE.—The term ‘tribal  
17          enterprise’ means any business enterprise, incor-  
18          porated or unincorporated under federal or tribal  
19          law, of an Indian tribe or group of Indian tribe.

20          “(15) USE.—The term ‘use’, in addition to its  
21          ordinary meaning, means the consumption, storage,  
22          handling, or disposal of cigarettes or smokeless to-  
23          bacco.”.

1 (b) REPORTS TO STATE TOBACCO TAX ADMINISTRA-  
2 TIONS.—Section 2 of the Jenkins Act (15 U.S.C. 376) is  
3 amended—

4 (1) by striking “cigarettes” each place it ap-  
5 pears and inserting “cigarettes or smokeless to-  
6 bacco”;

7 (2) in subsection (a)—

8 (A) in the matter preceding paragraph  
9 (1)—

10 (i) by inserting “CONTENTS.—” after  
11 “(a)”

12 (ii) by striking “or transfers” and in-  
13 serting “, transfers, or ships”;

14 (iii) by inserting “, locality, or Indian  
15 country of an Indian tribe” after “a  
16 State”;

17 (iv) by striking “to other than a dis-  
18 tributor licensed by or located in such  
19 State,”; and

20 (v) by striking “or transfer and ship-  
21 ment” and inserting “, transfer, or ship-  
22 ment”;

23 (B) in paragraph (1)—

24 (i) by striking “with the tobacco tax  
25 administrator of the State” and inserting

1 “with the Attorney General of the United  
2 States and with the tobacco tax adminis-  
3 trators of the State and place”; and

4 (ii) by striking “; and” and inserting  
5 the following: “, as well as telephone num-  
6 bers for each place of business, a principal  
7 electronic mail address, any website ad-  
8 dresses, and the name, address, and tele-  
9 phone number of an agent in the State au-  
10 thorized to accept service on behalf of such  
11 person;”;

12 (C) in paragraph (2), by striking “and the  
13 quantity thereof.” and inserting “the quantity  
14 thereof, and the name, address, and phone  
15 number of the person delivering the shipment to  
16 the recipient on behalf of the delivery seller,  
17 with all invoice or memoranda information re-  
18 lating to specific customers to be organized by  
19 city or town and by zip code; and”;

20 (D) by adding at the end the following:

21 “(3) with respect to each memorandum or in-  
22 voice filed with a State under paragraph (2), also  
23 file copies of such memorandum or invoice with the  
24 tobacco tax administrators and chief law enforce-  
25 ment officers of the local governments and Indian

1 tribes operating within the borders of the State that  
2 apply their own local or tribal taxes on cigarettes or  
3 smokeless tobacco.”;

4 (3) in subsection (b)—

5 (A) by inserting “PRESUMPTIVE EVI-  
6 DENCE.—” after “(b)”;

7 (B) by striking “(1) that” and inserting  
8 “that”; and

9 (C) by striking “, and (2)” and all that  
10 follows and inserting a period; and

11 (4) by adding at the end the following:

12 “(c) USE OF INFORMATION.—A tobacco tax adminis-  
13 trator or chief law enforcement officer who receives a  
14 memorandum or invoice under paragraph (2) or (3) of  
15 subsection (a) shall use such memorandum or invoice sole-  
16 ly for the purposes of the enforcement of this Act and the  
17 collection of any taxes owed on related sales of cigarettes  
18 and smokeless tobacco, and shall keep confidential any  
19 personal information in such memorandum or invoice not  
20 otherwise required for such purposes.”.

21 (c) REQUIREMENTS FOR DELIVERY SALES.—The  
22 Jenkins Act is amended by inserting after section 2 the  
23 following:

1   **“SEC. 2A. DELIVERY SALES.**

2           “(a) IN GENERAL.—With respect to delivery sales  
3 into a specific State and place, each delivery seller shall  
4 comply with—

5               “(1) the shipping requirements set forth in sub-  
6 section (b);

7               “(2) the recordkeeping requirements set forth  
8 in subsection (c);

9               “(3) all State, local, tribal, and other laws gen-  
10 erally applicable to sales of cigarettes or smokeless  
11 tobacco as if such delivery sales occurred entirely  
12 within the specific State and place, including laws  
13 imposing—

14                   “(A) excise taxes;

15                   “(B) licensing and tax-stamping require-  
16 ments;

17                   “(C) restrictions on sales to minors; and

18                   “(D) other payment obligations or legal re-  
19 quirements relating to the sale, distribution, or  
20 delivery of cigarettes or smokeless tobacco; and

21               “(4) the tax collection requirements set forth in  
22 subsection (d).

23   **“(b) SHIPPING AND PACKAGING.—**

24               “(1) REQUIRED STATEMENT.—For any ship-  
25 ping package containing cigarettes or smokeless to-  
26 bacco, the delivery seller shall include on the bill of

1 lading, if any, and on the outside of the shipping  
2 package, on the same surface as the delivery ad-  
3 dress, a clear and conspicuous statement providing  
4 as follows: ‘CIGARETTES/SMOKELESS TO-  
5 BACCO: FEDERAL LAW REQUIRES THE PAY-  
6 MENT OF ALL APPLICABLE EXCISE TAXES,  
7 AND COMPLIANCE WITH APPLICABLE LI-  
8 CENSING AND TAX-STAMPING OBLIGA-  
9 TIONS’.

10 “(2) FAILURE TO LABEL.—Any shipping pack-  
11 age described in paragraph (1) that is not labeled in  
12 accordance with that paragraph shall be treated as  
13 nondeliverable matter by a common carrier or other  
14 delivery service, if the common carrier or other deliv-  
15 ery service knows or should know the package con-  
16 tains cigarettes or smokeless tobacco. If a common  
17 carrier or other delivery service believes a package is  
18 being submitted for delivery in violation of para-  
19 graph (1), it may require the person submitting the  
20 package for delivery to establish that it is not being  
21 sent in violation of paragraph (1) before accepting  
22 the package for delivery. Nothing in this paragraph  
23 shall require the common carrier or other delivery  
24 service to open any package to determine its con-  
25 tents.

1           “(3) WEIGHT RESTRICTION.—A delivery seller  
2       shall not sell, offer for sale, deliver, or cause to be  
3       delivered in any single sale or single delivery any  
4       cigarettes or smokeless tobacco weighing more than  
5       10 pounds.

6           “(4) AGE VERIFICATION.—

7               “(A) IN GENERAL.—Notwithstanding any  
8       other provision of law, a delivery seller who  
9       mails or ships tobacco products—

10               “(i) shall not sell, deliver, or cause to  
11       be delivered any tobacco products to a per-  
12       son under the minimum age required for  
13       the legal sale or purchase of tobacco prod-  
14       ucts, as determined by the applicable law  
15       at the place of delivery;

16               “(ii) shall use a method of mailing or  
17       shipping that requires—

18               “(I) the purchaser placing the  
19       delivery sale order, or an adult who is  
20       at least the minimum age required for  
21       the legal sale or purchase of tobacco  
22       products, as determined by the appli-  
23       cable law at the place of delivery, to  
24       sign to accept delivery of the shipping  
25       container at the delivery address; and

1 “(II) the person who signs to ac-  
2 cept delivery of the shipping container  
3 to provide proof, in the form of a  
4 valid, government-issued identification  
5 bearing a photograph of the indi-  
6 vidual, that the person is at least the  
7 minimum age required for the legal  
8 sale or purchase of tobacco products,  
9 as determined by the applicable law at  
10 the place of delivery; and

11 “(iii) shall not accept a delivery sale  
12 order from a person without—

13 “(I) obtaining the full name,  
14 birth date, and residential address of  
15 that person; and

16 “(II) verifying the information  
17 provided in subclause (I), through the  
18 use of a commercially available data-  
19 base or aggregate of databases, con-  
20 sisting primarily of data from govern-  
21 ment sources, that are regularly used  
22 by government and businesses for the  
23 purpose of age and identity  
24 verification and authentication, to en-  
25 sure that the purchaser is at least the

1 minimum age required for the legal  
2 sale or purchase of tobacco products,  
3 as determined by the applicable law at  
4 the place of delivery.

5 “(B) LIMITATION.—No database being  
6 used for age and identity verification under  
7 subparagraph (A)(iii) shall be in the possession  
8 or under the control of the delivery seller, or be  
9 subject to any changes or supplementation by  
10 the delivery seller.

11 “(c) RECORDS.—

12 “(1) IN GENERAL.—Each delivery seller shall  
13 keep a record of any delivery sale, including all of  
14 the information described in section 2(a)(2), orga-  
15 nized by the State, and within such State, by the  
16 city or town and by zip code, into which such deliv-  
17 ery sale is so made.

18 “(2) RECORD RETENTION.—Records of a deliv-  
19 ery sale shall be kept as described in paragraph (1)  
20 in the year in which the delivery sale is made and  
21 for the next 4 years.

22 “(3) ACCESS FOR OFFICIALS.—Records kept  
23 under paragraph (1) shall be made available to to-  
24 bacco tax administrators of the States, to local gov-  
25 ernments and Indian tribes that apply their own

1 local or tribal taxes on cigarettes or smokeless to-  
2 bacco, to the attorneys general of the States, to the  
3 chief law enforcement officers of such local govern-  
4 ments and Indian tribes, and to the Attorney Gen-  
5 eral of the United States in order to ensure the com-  
6 pliance of persons making delivery sales with the re-  
7 quirements of this Act.

8 “(d) DELIVERY.—

9 “(1) IN GENERAL.—Except as provided in para-  
10 graph (2), no delivery seller may sell or deliver to  
11 any consumer, or tender to any common carrier or  
12 other delivery service, any cigarettes or smokeless to-  
13 bacco pursuant to a delivery sale unless, in advance  
14 of the sale, delivery, or tender—

15 “(A) any cigarette or smokeless tobacco ex-  
16 cise tax that is imposed by the State in which  
17 the cigarettes or smokeless tobacco are to be  
18 delivered has been paid to the State;

19 “(B) any cigarette or smokeless tobacco  
20 excise tax that is imposed by the local govern-  
21 ment of the place in which the cigarettes or  
22 smokeless tobacco are to be delivered has been  
23 paid to the local government; and

24 “(C) any required stamps or other indicia  
25 that such excise tax has been paid are properly

1           affixed or applied to the cigarettes or smokeless  
2           tobacco.

3           “(2) EXCEPTION.—Paragraph (1) does not  
4           apply to a delivery sale of smokeless tobacco if the  
5           law of the State or local government of the place  
6           where the smokeless tobacco is to be delivered re-  
7           quires or otherwise provides that delivery sellers col-  
8           lect the excise tax from the consumer and remit the  
9           excise tax to the State or local government, and the  
10          delivery seller complies with the requirement.

11          “(e) LIST OF UNREGISTERED OR NONCOMPLIANT  
12          DELIVERY SELLERS.—

13               “(1) IN GENERAL.—

14                   “(A) INITIAL LIST.—Not later than 90  
15                   days after this subsection goes into effect under  
16                   the Prevent All Cigarette Trafficking Act of  
17                   2008, the Attorney General of the United  
18                   States shall compile a list of delivery sellers of  
19                   cigarettes or smokeless tobacco that have not  
20                   registered with the Attorney General, pursuant  
21                   to section 2(a) or that are otherwise not in  
22                   compliance with this Act, and—

23                           “(i) distribute the list to—

24                                   “(I) the attorney general and tax  
25                                   administrator of every State;

1                   “(II) common carriers and other  
2                   persons that deliver small packages to  
3                   consumers in interstate commerce, in-  
4                   cluding the United States Postal Serv-  
5                   ice; and

6                   “(III) at the discretion of the At-  
7                   torney General of the United States,  
8                   to any other persons; and

9                   “(ii) publicize and make the list avail-  
10                  able to any other person engaged in the  
11                  business of interstate deliveries or who de-  
12                  livers cigarettes or smokeless tobacco in or  
13                  into any State.

14                  “(B) LIST CONTENTS.—To the extent  
15                  known, the Attorney General of the United  
16                  States shall include, for each delivery seller on  
17                  the list described in subparagraph (A)—

18                  “(i) all names the delivery seller uses  
19                  in the transaction of its business or on  
20                  packages delivered to customers;

21                  “(ii) all addresses from which the de-  
22                  livery seller does business or ships ciga-  
23                  rettes or smokeless tobacco;

1 “(iii) the website addresses, primary  
2 e-mail address, and phone number of the  
3 delivery seller; and

4 “(iv) any other information that the  
5 Attorney General determines would facili-  
6 tate compliance with this subsection by re-  
7 cipients of the list.

8 “(C) UPDATING.—The Attorney General of  
9 the United States shall update and distribute  
10 the list at least once every 4 months, and may  
11 distribute the list and any updates by regular  
12 mail, electronic mail, or any other reasonable  
13 means, or by providing recipients with access to  
14 the list through a nonpublic website that the  
15 Attorney General of the United States regularly  
16 updates.

17 “(D) STATE, LOCAL, OR TRIBAL ADDI-  
18 TIONS.—The Attorney General of the United  
19 States shall include in the list under subpara-  
20 graph (A) any noncomplying delivery sellers  
21 identified by any State, local, or tribal govern-  
22 ment under paragraph (5), and shall distribute  
23 the list to the attorney general or chief law en-  
24 forcement official and the tax administrator of  
25 any government submitting any such informa-

tion and to any common carriers or other persons who deliver small packages to consumers identified by any government pursuant to paragraph (5).

“(E) ACCURACY AND COMPLETENESS OF LIST OF NONCOMPLYING DELIVERY SELLERS.—

In preparing and revising the list required by subparagraph (A), the Attorney General shall—

“(i) use reasonable procedures to ensure maximum possible accuracy and completeness of the records and information relied on for the purpose of determining that such delivery seller is noncomplying;

“(ii) not later than 14 days prior to including any delivery seller on the list under paragraph (1), make a reasonable attempt to send notice to the delivery seller by letter, electronic mail, or other means that the delivery seller is being placed on such list or update, with that notice citing the relevant provisions of this Act and the specific reasons for being placed on such list;

1 “(iii) provide an opportunity to such  
2 delivery seller to challenge placement on  
3 such list;

4 “(iv) investigate each such challenge  
5 by contacting the relevant Federal, State,  
6 tribal, and local law enforcement officials,  
7 and provide the specific findings and re-  
8 sults of such investigation to such delivery  
9 seller not later than 30 days after the chal-  
10 lenge is made; and

11 “(v) upon finding that any placement  
12 is inaccurate, incomplete, or cannot be  
13 verified, promptly delete such delivery sell-  
14 er from the list as appropriate and notify  
15 each appropriate Federal, State, tribal,  
16 and local authority of such finding.

17 “(F) CONFIDENTIALITY.—The list distrib-  
18 uted pursuant to subparagraph (A) shall be  
19 confidential, and any person receiving the list  
20 shall maintain the confidentiality of the list but  
21 may deliver the list, for enforcement purposes,  
22 to any government official or to any common  
23 carrier or other person that delivers tobacco  
24 products or small packages to consumers. Noth-  
25 ing in this section shall prohibit a common car-

rier, the United States Postal Service, or any other person receiving the list from discussing with the listed delivery sellers the delivery sellers' inclusion on the list and the resulting effects on any services requested by such listed delivery seller.

“(2) PROHIBITION ON DELIVERY.—

“(A) IN GENERAL.—Commencing on the date that is 60 days after the date of the initial distribution or availability of the list under paragraph (1)(A), no person who receives the list under paragraph (1), and no person who delivers cigarettes or smokeless tobacco to consumers, shall knowingly complete, cause to be completed, or complete its portion of a delivery of any package for any person whose name and address are on the list, unless—

“(i) the person making the delivery knows or believes in good faith that the item does not include cigarettes or smokeless tobacco;

“(ii) the delivery is made to a person lawfully engaged in the business of manufacturing, distributing, or selling cigarettes or smokeless tobacco; or

1           “(iii) the package being delivered  
2           weighs more than 100 pounds and the per-  
3           son making the delivery does not know or  
4           have reasonable cause to believe that the  
5           package contains cigarettes or smokeless  
6           tobacco.

7           “(B) IMPLEMENTATION OF UPDATES.—  
8           Commencing on the date that is 30 days after  
9           the date of the distribution or availability of  
10          any updates or corrections to the list under  
11          paragraph (1), all recipients and all common  
12          carriers or other persons that deliver cigarettes  
13          or smokeless tobacco to consumers shall be sub-  
14          ject to subparagraph (A) in regard to such cor-  
15          rections or updates.

16          “(C) EXEMPTIONS.—Subparagraphs (A)  
17          and (B), subsection (b)(2), and any other re-  
18          quirements or restrictions placed directly on  
19          common carriers elsewhere in this subsection,  
20          shall not apply to a common carrier that is sub-  
21          ject to a settlement agreement relating to to-  
22          bacco product deliveries to consumers. For the  
23          purposes of this section, ‘settlement agreement’  
24          shall be defined to include the Assurance of  
25          Discontinuance entered into by the Attorney

1 General of New York and DHL Holdings USA,  
2 Inc. and DHL Express (USA), Inc. on or about  
3 July 1, 2005, the Assurance of Discontinuance  
4 entered into by the Attorney General of New  
5 York and United Parcel Service, Inc. on or  
6 about October 21, 2005, and the Assurance of  
7 Compliance entered into by the Attorney Gen-  
8 eral of New York and Federal Express Corpora-  
9 tion and Fed Ex Ground package Systems, Inc.  
10 on or about February 3, 2006, so long as  
11 each is honored nationwide to block illegal de-  
12 liveries of cigarettes or smokeless tobacco to  
13 consumers, and also includes any other active  
14 agreement between a common carrier and the  
15 states that operates nationwide to ensure that  
16 no deliveries of cigarettes and smokeless to-  
17 bacco shall be made to consumers for illegally  
18 operating Internet or mail-order sellers and  
19 that any such deliveries to consumers shall  
20 not be made to minors or without payment to  
21 the states and localities where the consumers  
22 are located of all taxes on the tobacco products.

23 “(3) SHIPMENTS FROM PERSONS ON LIST.—

24 “(A) IN GENERAL.—In the event that a  
25 common carrier or other delivery service delays

1 or interrupts the delivery of a package it has in  
2 its possession because it determines or has rea-  
3 son to believe that the person ordering the de-  
4 livery is on a list distributed under paragraph  
5 (1)—

6 “(i) the person ordering the delivery  
7 shall be obligated to pay—

8 “(I) the common carrier or other  
9 delivery service as if the delivery of  
10 the package had been timely com-  
11 pleted; and

12 “(II) if the package is not deliv-  
13 erable, any reasonable additional fee  
14 or charge levied by the common car-  
15 rier or other delivery service to cover  
16 its extra costs and inconvenience and  
17 to serve as a disincentive against such  
18 noncomplying delivery orders; and

19 “(ii) if the package is determined not  
20 to be deliverable, the common carrier or  
21 other delivery service shall, in its discre-  
22 tion, either provide the package and its  
23 contents to a Federal, State, or local law  
24 enforcement agency or destroy the package  
25 and its contents.

1           “(B) RECORDS.—A common carrier or  
2 other delivery service shall maintain, for a pe-  
3 riod of 5 years, any records kept in the ordi-  
4 nary course of business relating to any deliv-  
5 eries interrupted pursuant to this paragraph  
6 and provide that information, upon request, to  
7 the Attorney General of the United States or to  
8 the attorney general or chief law enforcement  
9 official or tax administrator of any State, local,  
10 or tribal government.

11           “(C) CONFIDENTIALITY.—Any person re-  
12 ceiving records under subparagraph (B) shall  
13 use such records solely for the purposes of the  
14 enforcement of this Act and the collection of  
15 any taxes owed on related sales of cigarettes  
16 and smokeless tobacco, and the person receiving  
17 records under subparagraph (B) shall keep con-  
18 fidential any personal information in such  
19 records not otherwise required for such pur-  
20 poses.

21           “(4) PREEMPTION.—

22           “(A) IN GENERAL.—No State, local, or  
23 tribal government, nor any political authority of  
24 2 or more State, local, or tribal governments,  
25 may enact or enforce any law or regulation re-

1           lating to delivery sales that restricts deliveries  
2           of cigarettes or smokeless tobacco to consumers  
3           by common carriers or other delivery services  
4           on behalf of delivery sellers by—

5                   “(i) requiring that the common carrier  
6                   or other delivery service verify the age or  
7                   identity of the consumer accepting the de-  
8                   livery by requiring the person who signs to  
9                   accept delivery of the shipping container to  
10                  provide proof, in the form of a valid, gov-  
11                  ernment-issued identification bearing a  
12                  photograph of the individual, that such  
13                  person is at least the minimum age re-  
14                  quired for the legal sale or purchase of to-  
15                  bacco products, as determined by either  
16                  State or local law at the place of delivery;

17                  “(ii) requiring that the common car-  
18                  rier or other delivery service obtain a sig-  
19                  nature from the consumer accepting the  
20                  delivery;

21                  “(iii) requiring that the common car-  
22                  rier or other delivery service verify that all  
23                  applicable taxes have been paid;

24                  “(iv) requiring that packages delivered  
25                  by the common carrier or other delivery

1 service contain any particular labels, no-  
2 tice, or markings; or

3 “(v) prohibiting common carriers or  
4 other delivery services from making deliv-  
5 eries on the basis of whether the delivery  
6 seller is or is not identified on any list of  
7 delivery sellers maintained and distributed  
8 by any entity other than the Federal Gov-  
9 ernment.

10 “(B) RELATIONSHIP TO OTHER LAWS.—

11 Except as provided in subparagraph (C), noth-  
12 ing in this paragraph shall be construed to pro-  
13 hibit, expand, restrict, or otherwise amend or  
14 modify—

15 “(i) section 14501(c)(1) or  
16 41713(b)(4) of title 49, United States  
17 Code;

18 “(ii) any other restrictions in Federal  
19 law on the ability of State, local, or tribal  
20 governments to regulate common carriers;  
21 or

22 “(iii) any provision of State, local, or  
23 tribal law regulating common carriers that  
24 falls within the provisions of sections

1                   14501(c)(2) or 41713(b)(4)(B) of title 49  
2                   of the United States Code.

3                   “(C) STATE LAWS PROHIBITING DELIVERY  
4                   SALES.—Nothing in the Prevent All Cigarette  
5                   Trafficking Act of 2008, the amendments made  
6                   by that Act, or in any other Federal statute  
7                   shall be construed to preempt, supersede, or  
8                   otherwise limit or restrict State laws prohibiting  
9                   the delivery sale, or the shipment or delivery  
10                  pursuant to a delivery sale, of cigarettes or  
11                  other tobacco products to individual consumers  
12                  or personal residences.

13                  “(5) STATE, LOCAL, AND TRIBAL ADDITIONS.—

14                  “(A) IN GENERAL.—Any State, local, or  
15                  tribal government shall provide the Attorney  
16                  General of the United States with—

17                  “(i) all known names, addresses,  
18                  website addresses, and other primary con-  
19                  tact information of any delivery seller that  
20                  offers for sale or makes sales of cigarettes  
21                  or smokeless tobacco in or into the State,  
22                  locality, or tribal land but has failed to  
23                  register with or make reports to the re-  
24                  spective tax administrator, as required by  
25                  this Act, or that has been found in a legal

1 proceeding to have otherwise failed to com-  
2 ply with this Act; and

3 “(ii) a list of common carriers and  
4 other persons who make deliveries of ciga-  
5 rettes or smokeless tobacco in or into the  
6 State, locality, or tribal lands.

7 “(B) UPDATES.—Any government pro-  
8 viding a list to the Attorney General of the  
9 United States under subparagraph (A) shall  
10 also provide updates and corrections every 4  
11 months until such time as such government no-  
12 tifies the Attorney General of the United States  
13 in writing that such government no longer de-  
14 sires to submit such information to supplement  
15 the list maintained and distributed by the At-  
16 torney General of the United States under  
17 paragraph (1).

18 “(C) REMOVAL AFTER WITHDRAWAL.—  
19 Upon receiving written notice that a govern-  
20 ment no longer desires to submit information  
21 under subparagraph (A), the Attorney General  
22 of the United States shall remove from the list  
23 under paragraph (1) any persons that are on  
24 the list solely because of such government’s  
25 prior submissions of its list of noncomplying de-

1 livery sellers of cigarettes or smokeless tobacco  
2 or its subsequent updates and corrections.

3 “(6) DEADLINE TO INCORPORATE ADDI-  
4 TIONS.—The Attorney General of the United States  
5 shall—

6 “(A) include any delivery seller identified  
7 and submitted by a State, local, or tribal gov-  
8 ernment under paragraph (5) in any list or up-  
9 date that is distributed or made available under  
10 paragraph (1) on or after the date that is 30  
11 days after the date on which the information is  
12 received by the Attorney General of the United  
13 States; and

14 “(B) distribute any such list or update to  
15 any common carrier or other person who makes  
16 deliveries of cigarettes or smokeless tobacco  
17 that has been identified and submitted by an-  
18 other government, pursuant to paragraph (5).

19 “(7) NOTICE TO DELIVERY SELLERS.—Not  
20 later than 14 days prior to including any delivery  
21 seller on the initial list distributed or made available  
22 under paragraph (1), or on any subsequent list or  
23 update for the first time, the Attorney General of  
24 the United States shall make a reasonable attempt  
25 to send notice to the delivery seller by letter, elec-

1       tronic mail, or other means that the delivery seller  
2       is being placed on such list or update, with that no-  
3       tice citing the relevant provisions of this Act.

4           “(8) LIMITATIONS.—

5               “(A) IN GENERAL.—Any common carrier  
6       or other person making a delivery subject to  
7       this subsection shall not be required or other-  
8       wise obligated to—

9               “(i) determine whether any list dis-  
10       tributed or made available under para-  
11       graph (1) is complete, accurate, or up-to-  
12       date;

13               “(ii) determine whether a person or-  
14       dering a delivery is in compliance with this  
15       Act; or

16               “(iii) open or inspect, pursuant to this  
17       Act, any package being delivered to deter-  
18       mine its contents.

19           “(B) ALTERNATE NAMES.—Any common  
20       carrier or other person making a delivery sub-  
21       ject to this subsection shall not be required or  
22       otherwise obligated to make any inquiries or  
23       otherwise determine whether a person ordering  
24       a delivery is a delivery seller on the list under  
25       paragraph (1) who is using a different name or

1 address in order to evade the related delivery  
2 restrictions, but shall not knowingly deliver any  
3 packages to consumers for any such delivery  
4 seller who the common carrier or other delivery  
5 service knows is a delivery seller who is on the  
6 list under paragraph (1) but is using a different  
7 name or address to evade the delivery restric-  
8 tions of paragraph (2).

9 “(C) PENALTIES.—Any common carrier or  
10 person in the business of delivering packages on  
11 behalf of other persons shall not be subject to  
12 any penalty under section 14101(a) of title 49,  
13 United States Code, or any other provision of  
14 law for—

15 “(i) not making any specific delivery,  
16 or any deliveries at all, on behalf of any  
17 person on the list under paragraph (1);

18 “(ii) not, as a matter of regular prac-  
19 tice and procedure, making any deliveries,  
20 or any deliveries in certain States, of any  
21 cigarettes or smokeless tobacco for any  
22 person or for any person not in the busi-  
23 ness of manufacturing, distributing, or  
24 selling cigarettes or smokeless tobacco; or

1                   “(iii) delaying or not making a deliv-  
 2                   ery for any person because of reasonable  
 3                   efforts to comply with this Act.

4                   “(D) OTHER LIMITS.—Section 2 and sub-  
 5                   sections (a), (b), (c), and (d) of this section  
 6                   shall not be interpreted to impose any respon-  
 7                   sibilities, requirements, or liability on common  
 8                   carriers.

9                   “(f) PRESUMPTION.—For purposes of this Act, a de-  
 10                  livery sale shall be deemed to have occurred in the State  
 11                  and place where the buyer obtains personal possession of  
 12                  the cigarettes or smokeless tobacco, and a delivery pursu-  
 13                  ant to a delivery sale is deemed to have been initiated or  
 14                  ordered by the delivery seller.”.

15                  (d) PENALTIES.—The Jenkins Act is amended by  
 16                  striking section 3 and inserting the following:

17       **“SEC. 3. PENALTIES.**

18                  “(a) CRIMINAL PENALTIES.—

19                       “(1) IN GENERAL.—Except as provided in para-  
 20                       graph (2), whoever violates any provision of this Act  
 21                       shall be guilty of a felony and shall be imprisoned  
 22                       not more than 3 years, fined under title 18, United  
 23                       States Code, or both.

24                       “(2) EXCEPTIONS.—

1           “(A) GOVERNMENTS.—Paragraph (1) shall  
2           not apply to a State, local, or tribal govern-  
3           ment.

4           “(B) DELIVERY VIOLATIONS.—A common  
5           carrier or independent delivery service, or em-  
6           ployee of a common carrier or independent de-  
7           livery service, shall be subject to criminal pen-  
8           alties under paragraph (1) for a violation of  
9           section 2A(e) only if the violation is committed  
10          intentionally—

11                 “(i) as consideration for the receipt  
12                 of, or as consideration for a promise or  
13                 agreement to pay, anything of pecuniary  
14                 value; or

15                 “(ii) for the purpose of assisting a de-  
16                 livery seller to violate, or otherwise evading  
17                 compliance with, section 2A.

18          “(b) CIVIL PENALTIES.—

19                 “(1) IN GENERAL.—Except as provided in para-  
20                 graph (3), whoever violates any provision of this Act  
21                 shall be subject to a civil penalty in an amount not  
22                 to exceed—

23                 “(A) in the case of a delivery seller, the  
24                 greater of—

1                   “(i) \$5,000 in the case of the first  
2                   violation, or \$10,000 for any other viola-  
3                   tion; or

4                   “(ii) for any violation, 2 percent of  
5                   the gross sales of cigarettes or smokeless  
6                   tobacco of such person during the 1-year  
7                   period ending on the date of the violation.

8                   “(B) in the case of a common carrier or  
9                   other delivery service, \$2,500 in the case of a  
10                  first violation, or \$5,000 for any violation with-  
11                  in 1 year of a prior violation.

12                  “(2) RELATION TO OTHER PENALTIES.—A civil  
13                  penalty under paragraph (1) for a violation of this  
14                  Act shall be imposed in addition to any criminal  
15                  penalty under subsection (a) and any other damages,  
16                  equitable relief, or injunctive relief awarded by the  
17                  court, including the payment of any unpaid taxes to  
18                  the appropriate Federal, State, local, or tribal gov-  
19                  ernments.

20                  “(3) EXCEPTIONS.—

21                  “(A) DELIVERY VIOLATIONS.—An em-  
22                  ployee of a common carrier or independent de-  
23                  livery service shall be subject to civil penalties  
24                  under paragraph (1) for a violation of section

1           2A(e) only if the violation is committed inten-  
2           tionally—

3                   “(i) as consideration for the receipt  
4                   of, or as consideration for a promise or  
5                   agreement to pay, anything of pecuniary  
6                   value; or

7                   “(ii) for the purpose of assisting a de-  
8                   livery seller to violate, or otherwise evading  
9                   compliance with, section 2A.

10                  “(B) OTHER LIMITATIONS.—No common  
11                  carrier or independent delivery service shall be  
12                  subject to civil penalties under paragraph (1)  
13                  for a violation of section 2A(e) if—

14                   “(i) the common carrier or inde-  
15                   pendent delivery service has implemented  
16                   and enforces effective policies and practices  
17                   for complying with that section; or

18                   “(ii) an employee of the common car-  
19                   rier or independent delivery service who  
20                   physically receives and processes orders,  
21                   picks up packages, processes packages, or  
22                   makes deliveries, takes actions that are  
23                   outside the scope of employment of the em-  
24                   ployee in the course of the violation, or  
25                   that violate the implemented and enforced

1 policies of the common carrier or inde-  
 2 pendent delivery service described in clause  
 3 (i).”.

4 (e) ENFORCEMENT.—The Jenkins Act is amended by  
 5 striking section 4 and inserting the following:

6 **“SEC. 4. ENFORCEMENT.**

7 “(a) IN GENERAL.—The United States district  
 8 courts shall have jurisdiction to prevent and restrain viola-  
 9 tions of this Act and to provide other appropriate injunc-  
 10 tive or equitable relief, including money damages, for such  
 11 violations.

12 “(b) AUTHORITY OF THE ATTORNEY GENERAL.—  
 13 The Attorney General of the United States shall admin-  
 14 ister and enforce the provisions of this Act.

15 “(c) STATE, LOCAL, AND TRIBAL ENFORCEMENT.—

16 “(1) IN GENERAL.—

17 “(A) STANDING.—A State, through its at-  
 18 torney general (or a designee thereof), or a  
 19 local government or Indian tribe that levies a  
 20 tax subject to section 2A(a)(3), through its  
 21 chief law enforcement officer (or a designee  
 22 thereof), may bring an action in a United  
 23 States district court to prevent and restrain vio-  
 24 lations of this Act by any person (or by any  
 25 person controlling such person) or to obtain any

1 other appropriate relief from any person (or  
2 from any person controlling such person) for  
3 violations of this Act, including civil penalties,  
4 money damages, and injunctive or other equi-  
5 table relief.

6 “(B) SOVEREIGN IMMUNITY.—Nothing in  
7 this Act shall be deemed to abrogate or con-  
8 stitute a waiver of any sovereign immunity of a  
9 State or local government or Indian tribe  
10 against any unconsented lawsuit under this Act,  
11 or otherwise to restrict, expand, or modify any  
12 sovereign immunity of a State or local govern-  
13 ment or Indian tribe.

14 “(2) PROVISION OF INFORMATION.—A State,  
15 through its attorney general, or a local government  
16 or Indian tribe that levies a tax subject to section  
17 2A(a)(3), through its chief law enforcement officer  
18 (or a designee thereof), may provide evidence of a  
19 violation of this Act by any person not subject to  
20 State, local, or tribal government enforcement ac-  
21 tions for violations of this Act to the Attorney Gen-  
22 eral of the United States or a United States attor-  
23 ney, who shall take appropriate actions to enforce  
24 the provisions of this Act.

25 “(3) USE OF PENALTIES COLLECTED.—

1           “(A) IN GENERAL.—There is established a  
2           separate account in the Treasury known as the  
3           ‘PACT Anti-Trafficking Fund’. Notwith-  
4           standing any other provision of law and subject  
5           to subparagraph (B), an amount equal to 50  
6           percent of any criminal and civil penalties col-  
7           lected by the United States Government in en-  
8           forcing the provisions of this Act shall be trans-  
9           ferred into the PACT Anti-Trafficking Fund  
10          and shall be available to the Attorney General  
11          of the United States for purposes of enforcing  
12          the provisions of this Act and other laws relat-  
13          ing to contraband tobacco products.

14          “(B) ALLOCATION OF FUNDS.—Of the  
15          amount available to the Attorney General under  
16          subparagraph (A), not less than 50 percent  
17          shall be made available only to the agencies and  
18          offices within the Department of Justice that  
19          were responsible for the enforcement actions in  
20          which the penalties concerned were imposed or  
21          for any underlying investigations.

22          “(4) NONEXCLUSIVITY OF REMEDY.—

23          “(A) IN GENERAL.—The remedies avail-  
24          able under this section and section 3 are in ad-

1           dition to any other remedies available under  
2           Federal, State, local, tribal, or other law.

3           “(B) STATE COURT PROCEEDINGS.—Noth-  
4           ing in this Act shall be construed to expand, re-  
5           strict, or otherwise modify any right of an au-  
6           thorized State official to proceed in State court,  
7           or take other enforcement actions, on the basis  
8           of an alleged violation of State or other law.

9           “(C) TRIBAL COURT PROCEEDINGS.—  
10          Nothing in this Act shall be construed to ex-  
11          pand, restrict, or otherwise modify any right of  
12          an authorized Indian tribal government official  
13          to proceed in tribal court, or take other enforce-  
14          ment actions, on the basis of an alleged viola-  
15          tion of tribal law.

16          “(D) LOCAL GOVERNMENT ENFORCE-  
17          MENT.—Nothing in this Act shall be construed  
18          to expand, restrict, or otherwise modify any  
19          right of an authorized local government official  
20          to proceed in State court, or take other enforce-  
21          ment actions, on the basis of an alleged viola-  
22          tion of local or other law.

23          “(d) PERSONS DEALING IN TOBACCO PRODUCTS.—

24          Any person who holds a permit under section 5712 of the  
25          Internal Revenue Code of 1986 (regarding permitting of

1 manufacturers and importers of tobacco products and ex-  
2 port warehouse proprietors) may bring an action in a  
3 United States district court to prevent and restrain viola-  
4 tions of this Act by any person (or by any person control-  
5 ling such person) other than a State, local, or tribal gov-  
6 ernment.

7 “(e) NOTICE.—

8 “(1) PERSONS DEALING IN TOBACCO PROD-  
9 UCTS.—Any person who commences a civil action  
10 under subsection (d) shall inform the Attorney Gen-  
11 eral of the United States of the action.

12 “(2) STATE, LOCAL, AND TRIBAL ACTIONS.—It  
13 is the sense of Congress that the attorney general of  
14 any State, or chief law enforcement officer of any lo-  
15 cality or tribe, that commences a civil action under  
16 this section should inform the Attorney General of  
17 the United States of the action.

18 “(f) PUBLIC NOTICE.—

19 “(1) IN GENERAL.—The Attorney General of  
20 the United States shall make available to the public,  
21 by posting such information on the Internet and by  
22 other appropriate means, information regarding all  
23 enforcement actions undertaken by the Attorney  
24 General or United States attorneys, or reported to  
25 the Attorney General, under this section, including

1 information regarding the resolution of such actions  
 2 and how the Attorney General and the United States  
 3 attorney have responded to referrals of evidence of  
 4 violations pursuant to subsection (c)(2).

5 “(2) REPORTS TO CONGRESS.—The Attorney  
 6 General shall submit to Congress each year a report  
 7 containing the information described in paragraph  
 8 (1).”.

9 **SEC. 3. TREATMENT OF CIGARETTES AND SMOKELESS TO-**  
 10 **BACCO AS NONMAILABLE MATTER.**

11 (a) IN GENERAL.—Chapter 83 of title 18, United  
 12 States Code, is amended by inserting after section 1716D  
 13 the following:

14 **“§ 1716E. Tobacco products as nonmailable**

15 “(a) PROHIBITION.—All cigarettes (as that term is  
 16 defined in section 1 of the Act of October 19, 1949, com-  
 17 monly referred to as the Jenkins Act) and smokeless to-  
 18 bacco (as that term is defined in section 1 of the Act of  
 19 October 19, 1949, commonly referred to as the Jenkins  
 20 Act) are nonmailable and shall not be deposited in or car-  
 21 ried through the mails.

22 “(b) ORDERS.—

23 “(1) If the Postal Service has reasonable cause  
 24 to believe that any person is engaged in the sending

1 of mail matter which is nonmailable under this sec-  
2 tion, the Postal Service may issue an order which—

3 “(A) directs any postmaster, to whom any  
4 mailing originating with such person or his rep-  
5 resentative is tendered for transmission through  
6 the mails (other than a mailing that consists  
7 only of one or more sealed letters), to refuse to  
8 accept any such mailing, unless such person or  
9 his representative first establishes to the satis-  
10 faction of the postmaster that the mailing does  
11 not contain any matter which is nonmailable  
12 under this section; and

13 “(B) requires the person or his representa-  
14 tive to cease and desist from mailing any mail  
15 matter which is nonmailable under this section.

16 “(2) For the purposes of paragraph (1) reason-  
17 able cause includes—

18 “(A) a statement on a publicly available  
19 website, or an advertisement, by any person  
20 that such person will mail matter which is non-  
21 mailable under this section in return for pay-  
22 ment; and

23 “(B) the placement of the person on the  
24 list created under section 2A(e) of the Jenkins  
25 Act.

1           “(3) Whoever fails to comply with an order  
2           issued under this subsection shall be liable to the  
3           United States for a civil penalty—

4                   “(A) not to exceed \$10,000 for each mail-  
5           ing of fewer than 10 pieces;

6                   “(B) not to exceed \$50,000 for each mail-  
7           ing of 10 to 50 pieces; and

8                   “(C) not to exceed \$100,000 for each mail-  
9           ing of more than 50 pieces.

10           “(4) An order under this subsection may be en-  
11           forced in the same manner as an order under section  
12           3005 of title 39.

13           “(c) EXCEPTIONS.—This section shall not apply to  
14           the following:

15                   “(1) CIGARS.—Cigars (as that term is defined  
16           in section 5702(a) of the Internal Revenue Code of  
17           1986).

18                   “(2) GEOGRAPHIC EXCEPTION.—Mailings with-  
19           in the State of Alaska or within the State of Hawaii.

20                   “(3) BUSINESS PURPOSES.—Tobacco products  
21           mailed only for business purposes between legally  
22           operating businesses that have all applicable State  
23           and Federal government licenses or permits and are  
24           engaged in tobacco product manufacturing, distribu-  
25           tion, wholesale, export, import, testing, investigation,

1 or research, or for regulatory purposes between any  
2 such businesses and State or Federal Government  
3 regulatory agencies, if the Postal Service issues a  
4 final rule establishing the standards and require-  
5 ments that apply to all such mailings and which in-  
6 cludes the following:

7 “(A) The Postal Service shall verify that  
8 any person submitting an otherwise nonmailable  
9 tobacco product into the mails as authorized by  
10 this paragraph is a business or government  
11 agency permitted to make such mailings pursu-  
12 ant to this section and the related final rule.

13 “(B) The Postal Service shall ensure that  
14 any recipient of an otherwise nonmailable to-  
15 bacco product sent through the mails pursuant  
16 to this paragraph is a business or government  
17 agency that may lawfully receive such product.

18 “(C) The mailings shall be sent through  
19 the Postal Service’s systems that provide for  
20 the tracking and confirmation of the delivery.

21 “(D) The identities of the business or gov-  
22 ernment entity submitting the mailing con-  
23 taining otherwise nonmailable tobacco products  
24 for delivery and the business or government en-  
25 tity receiving the mailing shall be clearly set

1           forth on the package and such information shall  
2           be kept in Postal Service records and made  
3           available to the Postal Service, the Attorney  
4           General, and to persons eligible to bring en-  
5           forcement actions pursuant to section 3(d) of  
6           the Prevent All Cigarette Trafficking Act of  
7           2008 for a period of at least three years.

8           “(E) The mailings shall be marked with a  
9           Postal Service label or marking that makes it  
10          clear to Postal Service employees that it is a  
11          permitted mailing of otherwise nonmailable to-  
12          bacco products that may be delivered only to a  
13          permitted government agency or business and  
14          may not be delivered to any residence or indi-  
15          vidual person.

16          “(F) The mailings shall be delivered only  
17          to verified adult employees of the recipient busi-  
18          nesses or government agencies who shall be re-  
19          quired to sign for the mailing.

20          “(4) CERTAIN INDIVIDUALS.—Tobacco products  
21          mailed by individual adult people for noncommercial,  
22          nonbusiness and non-money making purposes, in-  
23          cluding the return of a damaged or unacceptable to-  
24          bacco product to its manufacturer, if the Postal  
25          Service issues a final rule establishing the standards

1 and requirements that applies to all such mailings  
2 and which includes the following:

3 “(A) The Postal Service shall verify that  
4 any person submitting an otherwise nonmailable  
5 tobacco product into the mails as authorized by  
6 this section is the individual person identified  
7 on the return address label of the package and  
8 is an adult.

9 “(B) For mailings to individual persons  
10 the Postal Service shall require the person sub-  
11 mitting the otherwise nonmailable tobacco prod-  
12 uct into the mails as authorized by this sub-  
13 section to affirm that the recipient is an adult.

14 “(C) The package shall not weigh more  
15 than 10 ounces.

16 “(D) The mailings shall be sent through  
17 the Postal Service’s systems that provide for  
18 the tracking and confirmation of the delivery.

19 “(E) No package shall be delivered or  
20 placed in the possession of any individual per-  
21 son who is not a verified adult. For mailings to  
22 individual persons, the Postal Service shall de-  
23 liver the package only to the verified adult re-  
24 cipient at the recipient address or transfer it  
25 for delivery to an Air/Army Postal Office

1 (APO) or Fleet Postal Office (FPO) number  
2 designated in the recipient address.

3 “(F) No person shall initiate more than  
4 ten such mailings in any thirty-day period.

5 “(5) DEFINITION OF ADULT.—For the purposes  
6 of paragraphs (3) and (4), the term ‘adult’ means  
7 an individual person of at least the minimum age re-  
8 quired for the legal sale or purchase of tobacco prod-  
9 ucts as determined by the applicable law at the place  
10 the individual person is located.

11 “(d) SEIZURE AND FORFEITURE.—Any cigarettes or  
12 smokeless tobacco made nonmailable by this subsection  
13 that are deposited in the mails shall be subject to seizure  
14 and forfeiture, pursuant to the procedures set forth in  
15 chapter 46 of this title. Any tobacco products so seized  
16 and forfeited shall either be destroyed or retained by Gov-  
17 ernment officials for the detection or prosecution of crimes  
18 or related investigations and then destroyed.

19 “(e) ADDITIONAL PENALTIES.—In addition to any  
20 other fines and penalties imposed by this chapter for viola-  
21 tions of this section, any person violating this section shall  
22 be subject to an additional civil penalty in the amount of  
23 10 times the retail value of the nonmailable cigarettes or  
24 smokeless tobacco, including all Federal, State, and local  
25 taxes.

1       “(f) CRIMINAL PENALTY.—Whoever knowingly de-  
2       posits for mailing or delivery, or knowingly causes to be  
3       delivered by mail, according to the direction thereon, or  
4       at any place at which it is directed to be delivered by the  
5       person to whom it is addressed, anything that this section  
6       declares to be nonmailable matter shall be fined under this  
7       title, imprisoned not more than 1 year, or both.

8       “(g) DEFINITION.—As used in this section, the term  
9       ‘State’ has the meaning given that term in section  
10      1716(k).”.

11      (b) USE OF PENALTIES.—There is established a sep-  
12      arate account in the Treasury of the United States, to be  
13      known as the “PACT Postal Service Fund”. Notwith-  
14      standing any other provision of law, an amount equal to  
15      50 percent of any criminal and civil fines or monetary pen-  
16      alties collected by the United States Government in en-  
17      forcing the provisions of this subsection shall be trans-  
18      ferred into the PACT Postal Service Fund and shall be  
19      available to the Postmaster General for the purpose of en-  
20      forcing the provisions of this subsection.

21      (c) COORDINATION OF EFFORTS.—In the enforce-  
22      ment of this section, the Postal Service shall cooperate and  
23      coordinate its efforts with related enforcement activities  
24      of any other Federal agency or of any State, local, or trib-  
25      al government, whenever appropriate.

1 (d) ACTIONS BY STATE, LOCAL OR TRIBAL GOVERN-  
2 MENTS RELATING TO CERTAIN TOBACCO PRODUCTS.—

3 (1) A State, through its attorney general (or a  
4 designee thereof), or a local government or Indian  
5 tribe that levies an excise tax on tobacco products,  
6 through its chief law enforcement officer (or a des-  
7 ignee thereof), may in a civil action in a United  
8 States district court obtain appropriate relief with  
9 respect to a violation of section 1716E of title 18,  
10 United States Code. Appropriate relief includes in-  
11 junctive and equitable relief and damages equal to  
12 the amount of unpaid taxes on tobacco products  
13 mailed in violation of that section to addressees in  
14 that State.

15 (2) The State (or designee) shall serve prior  
16 written notice of any action under paragraph (1)  
17 upon the Postal Service and provide the Postal Serv-  
18 ice with a copy of its complaint, except in any case  
19 where such prior notice is not feasible, in which case  
20 the State (or designee) shall serve such notice imme-  
21 diately upon instituting such action. The Postal  
22 Service, in accordance with section 409(g)(2) of title  
23 39, United States Code, shall have the right (A) to  
24 intervene in the action, (B) upon so intervening, to

1 be heard on all matters arising therein, and (C) to  
2 file petitions for appeal.

3 (3) Nothing contained in this section shall be  
4 construed to prohibit an authorized State official  
5 from proceeding in State court on the basis of an al-  
6 leged violation of any general civil or criminal stat-  
7 ute of such State.

8 (4) Whenever the Postal Service institutes a  
9 civil action for violation of section 1716E of title 18,  
10 United States Code, no State may, during the pend-  
11 ency of such action instituted by the Postal Service,  
12 subsequently institute a separate civil action for any  
13 violation of such section against any defendant  
14 named in the Postal Service's complaint.

15 (5) Nothing in this section shall be deemed to  
16 abrogate or constitute a waiver of any sovereign im-  
17 munity of a State or local government or Indian  
18 tribe against any unconsented lawsuit under para-  
19 graph (1), or otherwise to restrict, expand, or mod-  
20 ify any sovereign immunity of a State or local gov-  
21 ernment or Indian tribe.

22 (6) A State, through its attorney general, or a  
23 local government or Indian tribe that levies an excise  
24 tax on tobacco products, through its chief law en-  
25 forcement officer (or a designee thereof), may pro-

1       vide evidence of a violation of paragraph (1) for  
2       commercial, business or money-making purposes by  
3       any person not subject to State, local, or tribal gov-  
4       ernment enforcement actions for violations of para-  
5       graph (1) to the Attorney General of the United  
6       States or a United States attorney, who shall take  
7       appropriate actions to enforce the provisions of this  
8       subsection.

9               (7) The remedies available under this sub-  
10       section are in addition to any other remedies avail-  
11       able under Federal, State, local, tribal, or other law.  
12       Nothing in this subsection shall be construed to ex-  
13       pand, restrict, or otherwise modify any right of an  
14       authorized State, local, or tribal government official  
15       to proceed in a State, tribal, or other appropriate  
16       court, or take other enforcement actions, on the  
17       basis of an alleged violation of State, local, tribal, or  
18       other law.

19       (e) CLERICAL AMENDMENT.—The table of sections  
20       at the beginning of chapter 83 of title 18 is amended by  
21       adding after the item relating to section 1716D the fol-  
22       lowing new item:

“1716E. Tobacco products as nonmailable.”.

1 **SEC. 4. COMPLIANCE WITH MODEL STATUTE OR QUALI-**  
2 **FYING STATUTE.**

3 (a) IN GENERAL.—A Tobacco Product Manufacturer  
4 or importer may not sell in, deliver to, or place for delivery  
5 sale, or cause to be sold in, delivered to, or placed for deliv-  
6 ery sale in a State that is a party to the Master Settlement  
7 Agreement, any cigarette manufactured by a Tobacco  
8 Product Manufacturer that is not in full compliance with  
9 the terms of the Model Statute or Qualifying Statute en-  
10 acted by such State requiring funds to be placed into a  
11 qualified escrow account under specified conditions, or any  
12 regulations promulgated pursuant to such statute.

13 (b) JURISDICTION TO PREVENT AND RESTRAIN VIO-  
14 LATIONS.—

15 (1) IN GENERAL.—The United States district  
16 courts shall have jurisdiction to prevent and restrain  
17 violations of subsection (a) in accordance with this  
18 subsection.

19 (2) INITIATION OF ACTION.—A State, through  
20 its attorney general, may bring an action in the  
21 United States district courts to prevent and restrain  
22 violations of subsection (a) by any person (or by any  
23 person controlling such person).

24 (3) ATTORNEY FEES.—In any action under  
25 paragraph (2), a State, through its attorney general,  
26 shall be entitled to reasonable attorney fees from a

1 person found to have willfully and knowingly violated  
2 subsection (a).

3 (4) NONEXCLUSIVITY OF REMEDIES.—The rem-  
4 edy available under paragraph (2) is in addition to  
5 any other remedies available under Federal, State,  
6 or other law. No provision of this Act or any other  
7 Federal law shall be held or construed to prohibit or  
8 preempt the Master Settlement Agreement, the  
9 Model Statute (as defined in the Master Settlement  
10 Agreement), any legislation amending or complemen-  
11 tary to the Model Statute in effect as of June 1,  
12 2006, or any legislation substantially similar to such  
13 existing, amending, or complementary legislation  
14 hereinafter enacted.

15 (5) OTHER ENFORCEMENT ACTIONS.—Nothing  
16 in this subsection shall be construed to prohibit an  
17 authorized State official from proceeding in State  
18 court or taking other enforcement actions on the  
19 basis of an alleged violation of State or other law.

20 (6) AUTHORITY OF THE ATTORNEY GEN-  
21 ERAL.—The Attorney General of the United States  
22 may administer and enforce subsection (a).

23 (c) DEFINITIONS.—In this section the following defi-  
24 nitions apply:

1           (1) DELIVERY SALE.—The term “delivery sale”  
2 means any sale of cigarettes or smokeless tobacco to  
3 a consumer if—

4                   (A) the consumer submits the order for  
5 such sale by means of a telephone or other  
6 method of voice transmission, the mails, or the  
7 Internet or other online service, or the seller is  
8 otherwise not in the physical presence of the  
9 buyer when the request for purchase or order is  
10 made; or

11                   (B) the cigarettes or smokeless tobacco are  
12 delivered to the buyer by common carrier, pri-  
13 vate delivery service, or other method of re-  
14 mote delivery, or the seller is not in the physical  
15 presence of the buyer when the buyer obtains  
16 possession of the cigarettes or smokeless to-  
17 bacco.

18           (2) IMPORTER.—The term “importer” means  
19 each of the following:

20                   (A) SHIPPING OR CONSIGNING.—Any per-  
21 son in the United States to whom nontaxpaid  
22 tobacco products manufactured in a foreign  
23 country, Puerto Rico, the Virgin Islands, or a  
24 possession of the United States are shipped or  
25 consigned.

1 (B) MANUFACTURING WAREHOUSES.—Any  
2 person who removes cigars or cigarettes for sale  
3 or consumption in the United States from a  
4 customs-bonded manufacturing warehouse.

5 (C) UNLAWFUL IMPORTING.—Any person  
6 who smuggles or otherwise unlawfully brings to-  
7 bacco products into the United States.

8 (3) MASTER SETTLEMENT AGREEMENT.—The  
9 term “Master Settlement Agreement” means the  
10 agreement executed November 23, 1998, between  
11 the attorneys general of 46 States, the District of  
12 Columbia, the Commonwealth of Puerto Rico, and 4  
13 territories of the United States and certain tobacco  
14 manufacturers.

15 (4) MODEL STATUTE; QUALIFYING STATUTE.—  
16 The terms “Model Statute” and “Qualifying Stat-  
17 ute” means a statute as defined in section  
18 IX(d)(2)(e) of the Master Settlement Agreement.

19 (5) TOBACCO PRODUCT MANUFACTURER.—The  
20 term “Tobacco Product Manufacturer” has the  
21 meaning given that term in section II(uu) of the  
22 Master Settlement Agreement.

1 **SEC. 5. INSPECTION BY BUREAU OF ALCOHOL, TOBACCO,**  
2 **FIREARMS, AND EXPLOSIVES OF RECORDS**  
3 **OF CERTAIN CIGARETTE AND SMOKELESS**  
4 **TOBACCO SELLERS; CIVIL PENALTY.**

5 Section 2343(c) of title 18, United States Code, is  
6 amended to read as follows:

7 “(c)(1) Any officer of the Bureau of Alcohol, To-  
8 bacco, Firearms, and Explosives may, during normal busi-  
9 ness hours, enter the premises of any person described in  
10 subsection (a) or (b) for the purposes of inspecting—

11 “(A) any records or information required to be  
12 maintained by such person under the provisions of  
13 law referred to in this chapter; or

14 “(B) any cigarettes or smokeless tobacco kept  
15 or stored by such person at such premises.

16 “(2) The district courts of the United States shall  
17 have the authority in a civil action under this subsection  
18 to compel inspections authorized by paragraph (1).”

19 “(3) Whoever violates paragraph (1), or an order  
20 issued under paragraph (2), shall be subject to a civil pen-  
21 alty in an amount not to exceed \$10,000 for each viola-  
22 tion.”.

1 **SEC. 6. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
2 **TRIBAL MATTERS.**

3 (a) IN GENERAL.—Nothing in this Act or the amend-  
4 ments made by this Act is intended nor shall be construed  
5 to affect, amend, or modify—

6 (1) any agreements, compacts, or other inter-  
7 governmental arrangements between any State or  
8 local government and any government of an Indian  
9 tribe (as that term is defined in section 4(e) of the  
10 Indian Self-Determination and Education Assistance  
11 Act (25 U.S.C. 450b(e)) relating to the collection of  
12 taxes on cigarettes or smokeless tobacco sold in In-  
13 dian country;

14 (2) any State laws that authorize or otherwise  
15 pertain to any such intergovernmental arrangements  
16 or create special rules or procedures for the collec-  
17 tion of State, local, or tribal taxes on cigarettes or  
18 smokeless tobacco sold in Indian country;

19 (3) any limitations under Federal or State law,  
20 including Federal common law and treaties, on  
21 State, local, and tribal tax and regulatory authority  
22 with respect to the sale, use, or distribution of ciga-  
23 rettes and smokeless tobacco by or to Indian tribes,  
24 tribal members, tribal enterprises, or in Indian coun-  
25 try;

1           (4) any Federal law, including Federal common  
2       law and treaties, regarding State jurisdiction, or  
3       lack thereof, over any tribe, tribal members, tribal  
4       enterprises, tribal reservations, or other lands held  
5       by the United States in trust for one or more Indian  
6       tribes; and

7           (5) any State or local government authority to  
8       bring enforcement actions against persons located in  
9       Indian country.

10       (b) COORDINATION OF LAW ENFORCEMENT.—Noth-  
11   ing in this Act or the amendments made by this Act shall  
12   be construed to inhibit or otherwise affect any coordinated  
13   law enforcement effort by 1 or more States or other juris-  
14   dictions, including Indian tribes, through interstate com-  
15   pact or otherwise, that—

16           (1) provides for the administration of tobacco  
17       product laws or laws pertaining to interstate sales or  
18       other sales of tobacco products;

19           (2) provides for the seizure of tobacco products  
20       or other property related to a violation of such laws;  
21       or

22           (3) establishes cooperative programs for the ad-  
23       ministration of such laws.

24       (c) TREATMENT OF STATE AND LOCAL GOVERN-  
25   MENTS.—Nothing in this Act or the amendments made

1 by this Act is intended, and shall not be construed to, au-  
2 thorize, deputize, or commission States or local govern-  
3 ments as instrumentalities of the United States.

4 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
5 Nothing in this Act or the amendments made by this Act  
6 is intended to prohibit, limit, or restrict enforcement by  
7 the Attorney General of the United States of the provi-  
8 sions herein within Indian country.

9 (e) AMBIGUITY.—Any ambiguity between the lan-  
10 guage of this section or its application and any other pro-  
11 vision of this Act shall be resolved in favor of this section.

12 **SEC. 7. SENSE OF CONGRESS CONCERNING THE PRECE-**  
13 **DENTIAL EFFECT OF THIS ACT.**

14 It is the sense of Congress that unique harms are  
15 associated with online cigarette sales, including problems  
16 with verifying the ages of consumers in the digital market  
17 and the long-term health problems associated with the use  
18 of certain tobacco products. This Act was introduced rec-  
19 ognizing the longstanding interest of Congress in urging  
20 compliance with States' laws regulating remote sales of  
21 certain tobacco products to citizens of those States, includ-  
22 ing the passage of the Jenkins Act over 50 years ago,  
23 which established reporting requirements for out-of-State  
24 companies that sell certain tobacco products to citizens of  
25 the taxing States, and which gave authority to the Depart-

1 ment of Justice and the Bureau of Alcohol, Tobacco and  
2 Firearms to enforce the Jenkins Act. In light of the  
3 unique harms and circumstances surrounding the online  
4 sale of certain tobacco products, this Act is intended to  
5 help collect cigarette excise taxes, to stop tobacco sales to  
6 underage youth, and to help the States enforce their laws  
7 that target the online sales of certain tobacco products  
8 only. This Act is in no way meant to create a precedent  
9 regarding the collection of State sales or use taxes by, or  
10 the validity of efforts to impose other types of taxes on,  
11 out-of-State entities that do not have a physical presence  
12 within the taxing State.

13 **SEC. 8. EFFECTIVE DATE.**

14 (a) IN GENERAL.—Except as provided in subsection  
15 (b), this Act shall take effect on the date that is 90 days  
16 after the date of enactment of this Act.

17 (b) BATFE AUTHORITY.—Section 5 shall take effect  
18 on the date of enactment of this Act.

19 **SEC. 9. SEVERABILITY.**

20 If any provision of this, or an amendment made by  
21 this Act or the application thereof to any person or cir-  
22 cumstance is held invalid, the remainder of the Act and

- 1 the application of it to any other person or circumstance
- 2 shall not be affected thereby.

Passed the House of Representatives September 10,  
2008.

Attest:                      LORRAINE C. MILLER,  
*Clerk.*



Calendar No. 1115

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 4081**

---

---

**AN ACT**

To prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

---

---

OCTOBER 2 (legislative day, SEPTEMBER 17), 2008

Read twice and placed on the calendar